

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding the  
Implementation of the Suspension of Direct  
Access Pursuant to Assembly Bill 1X and  
Decision 01-09-060.

Rulemaking 02-01-011  
(Filed January 9, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING MOTION TO STAY PRIOR RULING  
REGARDING "NEW LOAD" EXCEPTION CRITERIA**

On July 25, 2003, California Municipal Utilities Association (CMUA) filed a motion requesting that the timeline for responses to the Administrative Law Judge (ALJ) ruling dated July 23, 2003 be stayed pending the Commission's decision on rehearing of D.03-07-028. This ruling called for comments regarding the "new load" exception for existing publicly owned utilities as discussed in D.03-07-028.

Under the current schedule, responses to the ALJ ruling are due on August 11, 2003. CMUA argues that it is unfair and inappropriate to require responses to the ALJ ruling prior to the date that the Commission considers its application for rehearing at the meeting of August 21, 2003. CMUA argues that responses to the ALJ ruling will not be necessary, and efforts to develop responses will have been in vain if the Commission subsequently modifies D.03-07-028 in response to the CMUA application for rehearing.

CMUA also claims it does not have the resources to concurrently dedicate both to responding to the ALJ ruling and developing its application for

rehearing, thus leaving insufficient time to prepare the response to the ALJ ruling after the August 1 filing date for the application for rehearing.

Under the expedited schedule established by the ALJ ruling, responses to the CMUA motion were filed by Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).

PG&E notes that while D.03-07-028 was not mailed until July 22, the Brown Alternate adopted by the Commission (which is largely identical to D.03-07-028) has been available publicly since July 10, so CMUA has already had three weeks to work on a draft of its application for rehearing. SCE likewise assumes that the “paper muni” utilities have long ago identified who they are and how they would be impacted by the Commission’s decision on this issue. Thus, SCE questions CMUA’s claims concerning the need for additional time to prepare a response to the ruling.

PG&E argues that the responses requested by the ALJ Ruling are not particularly burdensome, and it would be more “wasteful” for the Commission to delay implementing the MDL decision until it becomes final and unappealable than it would be for the Commission to begin the work of implementing the decision now. SCE also disagrees that responding to the ALJ Ruling would result in “wasted time and resources” if the Commission modifies the MDL Decision. SCE argues that the requested information may be useful and the Commission should have it sooner rather than later.

If the Commission is inclined to grant CMUA’s motion, PG&E requests that it be subject to certain express caveats. Specifically, PG&E asks that any stay granted not be extended beyond August 21, when the Commission is statutorily required to decide any applications for rehearing of the MDL decision.

SCE raises the concern that granting the CMUA motion could unnecessarily “stunt the record” of this proceeding, which could potentially be used later by a party asserting in court that the Commission cannot or could not meaningfully render a decision on rehearing because it did not have “all the facts” or is not in a position to appreciate the impact of any decision on rehearing. SCE argues that such arguments as to an allegedly impaired evidentiary record might position CMUA or some other party to contest in court that the MDL Decision is arbitrary.

SDG&E argues that CMUA has failed to state sufficient grounds to support such a stay, and granting it would serve to frustrate and delay the Commission’s objectives of promptly recovering the Department of Water Resources (DWR) power costs from customers of publicly-owned utilities. SDG&E states that by seeking a “stay” of the Ruling, CMUA essentially seeks to stay both the Ruling and the MDL Decision, but without reference to or discussion of any showing to justify such a stay under applicable law and procedure.<sup>1</sup>

## **Discussion**

CMUA raises two general reasons in support of its motion for a stay. One of the reasons relates to the claim that CMUA has insufficient resources to respond to the ALJ ruling within the time allotted. The other reason has to do with CMUA’s claim that it would be wasteful and cause unnecessary expenditure of resources assuming the Commission’s disposition of parties’

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<sup>1</sup> Granting a stay of the Ruling is necessarily a stay of the underlying MDL Decision.

applications for rehearing rendered moot the matters that are addressed in the ALJ ruling.

CMUA's argument to stay the schedule for responses to the ruling until after a Commission order on rehearing is not persuasive. The Commission's Rules and applicable statutory law provide that the underlying decision remain in effect unless and until the Commission determines otherwise. Absent a showing of imminent harm or other grounds that would justify a stay, the mere filing of an application for rehearing, or assertion that such an application will be filed, is not sufficient to justify a stay of a decision or other procedural ruling designed to carry out that decision. CMUA has not shown that any imminent harm would result from proceeding to implement D.03-07-028. As stated in Rule 86, in pertinent part: "Mere filing of an application for rehearing shall not excuse compliance with an order or decision."

Moreover, Public Utilities Code Section 1735 provides:

An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.

CMUA's second argument concerning its constrained resources would not justify a stay, but at best, merely an extension of a discrete number of days for the filing of a response. As opposing parties point out, however, the Brown Alternate Decision (which is largely identical to D.03-07-028) has been available publicly since July 10, so CMUA already had three weeks to work on a draft of its application for rehearing. Even assuming that CMUA would be somewhat constrained in budgeting its time between finalizing its rehearing application and responding to the ALJ ruling, it is not clear that CMUA lacked any flexibility

to coordinate between these two work tasks during the period between July 23 and August 1, 2003. Yet, arguably, the overlapping dual requirements of the ALJ ruling and rehearing order may have posed some additional constraints on CMUA's (or other parties') resources. In recognition of that possibility, an extension of an additional four business days shall be granted for parties to respond to the ALJ ruling. Thus, the date for responses shall be extended from August 11 to August 15, 2003. The due date for reply comments is likewise extended to August 29, 2003.

**IT IS RULED** that:

1. CMUA's motion is denied, in part, to the extent it seeks a stay of the due date for responses to the ALJ ruling of July 23, 2003.
2. CMUA's motion is granted, in part, to the extent that the due date for responses to the ALJ motion is extended from August 11 to August 15, 2003, and the due date for reply comments is extended to August 29, 2003.

Dated August 4, 2003 in San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Motion to Stay Prior Ruling Regarding "New Load" Exception Criteria on all parties of record in this proceeding or their attorneys of record.

Dated August 4, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

**N O T I C E**

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